

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

DMITRY PRONIN	§	
VS.	§	CIVIL ACTION NO. 1:19-cv-392
S. PENRY, ET AL.	§	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Dmitry Pronin, a prisoner currently confined at the Jessup Correctional Facility in Jessup, Maryland, proceeding *pro se* and *in forma pauperis*, filed this civil action pursuant to the Federal Tort Claims Act and *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. (Doc. #35.) The magistrate judge recommends dismissing the action pursuant to Federal Rule of Civil Procedure 41(b) due to Plaintiff's failure to submit an amended pleading in compliance with a court order.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record and the pleadings. Proper notice was given to the plaintiff at his last known address. *See* FED. R. CIV. P. 5(b)(2)(C). No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Because the statute of limitations would bar future litigation of Plaintiff's claims, a dismissal would act as a dismissal with prejudice. A dismissal with prejudice is appropriate only if there is

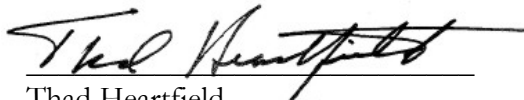
a clear record of delay or contumacious conduct by the plaintiff, and if lesser sanctions would not serve the interests of justice. *Coleman v. Sweetin*, 745 F.3d 756, 766 (5th Cir. 2014). In this case, Plaintiff has not exhibited a clear record of contumacious conduct. Although the Order to submit an amended pleading (Doc. #21) was entered on November 24, 2020, Plaintiff claimed that he never received a copy of the Order. On October 28, 2021, a copy of the Order to submit an amended pleading was sent to Plaintiff, and he was granted a thirty-day extension of time to comply with the Order. As of this date, Plaintiff has not responded to the Order.

The court has considered imposing lesser sanctions and found them inadequate to address the current situation. Because Plaintiff is proceeding *in forma pauperis*, the imposition of monetary sanctions is almost certainly futile. A dismissal is the only sanction available in this instance, but the court will lessen the sanction by allowing Plaintiff to reopen the case by submitting an amended pleading in compliance with the Order within sixty days of the date the judgment is entered.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

**SIGNED** this the 27 day of January, 2022.

  
Thad Heartfield  
United States District Judge